

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WMCV PHASE 3, LLC,

Plaintiff,

vs.

SHUSHOK & MCCOY, INC., et. al.,

Defendants.

Case No.: 2:10-cv-00661-GMN-NJK

ORDER

Pending before the Court is Plaintiff WMCV Phase 3, LLC's Motion for Leave to File a Motion for Summary Judgment. (ECF No. 265.) No opposition has been filed regarding this motion.

I. BACKGROUND

This case has a long procedural history in this Court, but for the purposes of this Order the Court will address only the details and allegations relevant to the instant motion. This case was originally filed in Clark County District Court on March 26, 2010. (Pet. for Rem. 2:2-5, ECF No. 1.) On May 6, 2010, Defendants Shushok & McCoy, Inc., Matthew J. Travis, Matt Turner, Richard Birdwell, and Global Accents, Inc. removed the case, citing this Court's jurisdiction pursuant to 28 U.S.C. § 1332.

Plaintiff's Amended Complaint raises causes of action against Defendant Birdwell for Civil Conspiracy, Conversion, and Intentional Interference with Contract which center upon allegations that Defendant Birdwell fraudulently manufactured and entered

1 into two agreements on Plaintiff's behalf without authorization or consent. (Am. Compl.,
2 ECF No. 33.) Plaintiff seeks general damages, special damages, attorneys' fees, punitive
3 damages, treble damages pursuant to Nev. Rev. Stat. 207.470, as well as injunctive and
4 declaratory relief based on these claims. (*Id.*) On November 6, 2012, the Court ordered
5 that Defendant Birdwell's answer be stricken and default be entered due to his failure to
6 participate in a mandatory settlement conference. (*See* Min. Order, ECF No. 146); (Pl.'s
7 Mot. to Strike, ECF No. 139.) Default was subsequently entered as to Defendant
8 Birdwell on November 7, 2012. (Clerk's Entry of Default, ECF No. 148.)

9 On June 11 and 12, 2013, the Court held a bench trial in this case. (Order, ECF
10 No. 209.) At that time, Global Accents, Inc. was the only active defendant in the action.
11 (*Id.*) Ultimately, the Court entered judgment in favor of Defendant Global Accents, Inc.
12 as to all of Plaintiff's claims against it. (*Id.*)

13 On October 21, 2013, Defendant Birdwell moved for the Court to set aside the
14 default against him, arguing that his previous failure to attend the settlement conference
15 was excusable neglect. (Mot. to Set Aside, ECF No. 206.) On March 4, 2014, the Court
16 adopted a Report and Recommendation issued by Magistrate Judge Koppe and set aside
17 the default against Defendant Birdwell. (Order, ECF No. 231.) Plaintiff now requests
18 leave from the Court to file a motion for summary judgment regarding its claims against
19 Defendant Birdwell.

20 **II. ANALYSIS**

21 Pursuant to Local Rule 26-4, the Court may extend or modify a scheduling order
22 upon a showing of good cause. D. Nev. R. 26-4. The Scheduling Order in the instant
23 case required that parties file any dispositive motions on or before May 18, 2011.
24 (Scheduling Ord., ECF No. 30.) This deadline was subsequently extended to October 24,
25 2011. (Order, ECF No. 71.) Because the dispositive motion deadline has long passed,

1 Plaintiff has been unable to file a motion for summary judgment regarding its claims
2 against Defendant Birdwell since the Court set aside the default on March 14, 2014. The
3 Court recognizes that resolving these claims through summary judgment, if warranted,
4 would save all parties the resources and time required to undergo a trial on the merits.
5 Therefore, the Court finds that good cause exists to grant Plaintiff leave to file a motion
6 for summary judgment. Concordantly, the Court will grant Defendant Birdwell leave to
7 file a dispositive motion in this matter if he so chooses.


8 **CONCLUSION**

9 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File a Motion
10 for Summary Judgment (ECF No. 265) is **GRANTED**.

11 **IT IS FURTHER ORDERED** that Plaintiff and Defendant Birdwell shall have
12 thirty days from the entry of this order to file dispositive motions in this case.

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14 **DATED** this 28 day of August, 2014.

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Gloria M. Navarro, Chief Judge
United States District Judge